
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 503 **Hearing Date:** June 29, 2021
Author: Stone
Version: June 17, 2021
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Wards: probation*

HISTORY

Source: Alliance for Boys and Men of Color
Communities United for Restorative Youth Justice
National Center for Youth Law
W. Haywood Burns Institute
Young Women's Freedom Center
Youth Justice Coalition

Prior Legislation: SB 1134 (Beall), didn't move in 2020 due to COVID-19

Support: ACLU California Action; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Youth; California Public Defenders Association; CASA of Los Angeles; Ceres Policy Research; Children Now; Children's Defense Fund – California; Chispa; Commonweal Juvenile Justice Program; Community Agency for Resources Advocacy and Services; Community Works; County of San Diego; Courage California; Drug Policy Alliance; East Bay Community Law Center; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; Felony Murder Elimination Project; Freedom 4 Youth; Fresno Barrios Unidos; Human Rights Watch; Immigrant Legal Resource Center; Initiate Justice; John Burton Advocates for Youth; Khmer Girls in Action; Legal Services for Prisoners With Children; Monarch Services; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; National Juvenile Justice Network; Public Counsel; Reuniting Families Contra Costa; San Francisco Public Defender; San Mateo County Participatory Defense; Showing Up for Racial Justice Bay Area; Sigma Beta Xi, Inc.; Silicon Valley De-Bug; Underground GRIT; Voices Youth Centers; Women's Foundation California; Youth Alive!; Youth Alliance; Youth Law Center

Opposition: AFSCME Local 2703; Association of Orange County Deputy Sheriffs; Association of Probation Supervisors of Los Angeles County; California Judges Association; Chief Probation Officers of California; Fraternal Order of Police, Southern California Probation, Lodge# 702; Kern County Probation Officers Association; Los Angeles County Probation Officers Union, AFSCME Local 685; N. California Probation Lodge 19, California Fraternal Order of Police; Peace Officers' Research Association of California; Professional Managers Association, AFSCME Local 1967; Sacramento County Probation Association; San Diego

County Probation Officers Association; San Joaquin County Probation Officers Association; San Luis Obispo County Probation Peace Officers Association; Santa Clara County Probation Peace Officers' Union, AFSCME Local 1587; Solano Probation Peace Officer Association; State Coalition of Probation Organizations; Ventura County Professional Peace Officers Association

Assembly Floor Vote:

41 - 22

PURPOSE

The purpose of this bill is to limit the period of time in which a court may place a ward of the court on probation to six months, except that a court may extend probation in six month increments upon proof by a preponderance of the evidence that it is in the best interest of the ward.

Existing law provides that a minor between 12 and 17 years of age, inclusive, who violates any federal, state, or local law or ordinance, and a minor under 12 years of age who is alleged to have committed murder or a specified serious sex offense, is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 602.)

Existing law provides, effective July 1, 2021, that the juvenile court may retain jurisdiction over a ward until the person attains 21 years of age, except that if the wardship is based on the commission of a specified serious offense, the juvenile court may retain jurisdiction until age 23, unless the ward would have faced an aggregate sentence of seven years or more in criminal court, in which case the juvenile court may retain jurisdiction until age 25. (Welf. & Inst. Code, § 607, subds. (a)-(c), as effective July 1, 2021.)

Existing law authorizes the juvenile court to place a ward of the court on supervised probation. Authorizes the court to make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the ward. (Welf. & Inst. Code, § 727, subd. (a).)

Existing law provides that if a minor is found to be a ward of the juvenile court due to the commission of a battery on school property, the court as a condition of probation is required to order the minor to make restitution to the victim. (Welf. & Inst. Code, § 729.)

Existing law provides that if a minor is found to be a ward of the juvenile court due to the commission of a crime on a public transit vehicle, the court as a condition of probation is required to order the minor to wash, paint, repair, or replace the damaged or destroyed property, or otherwise make restitution to the property owner. Provides that if restitution is found inappropriate, the court must order the minor to perform community service, except as specified. Provides that in lieu of community service, the court may order the ward or ward's parents to participate in a graffiti abatement program, if one exists, as a condition of probation. (Welf. & Inst. Code, § 729.1, subd. (a).)

Existing law provides that if a minor is found to be a ward of the juvenile court and is not ordered removed from the physical custody of the parent or guardian, the court as a condition of probation is required to order the minor to attend a school program approved by the probation officer without absence, to order the parent or guardian to participate in a counseling or

education program with the minor, and to order minor to remain at the minor's place of residence between 10 pm and 6 am, except as specified. (Welf. & Inst. Code, § 729.2.)

Existing law provides that if a minor is found to be a ward of the juvenile court due to the commission of an assault or battery on school or park property, the court is required to order the minor to attend counseling. (Welf. & Inst. Code, § 729.6.)

Existing law provides that if a minor is found to be a ward of the court due to the commission of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined, the court is required, when recommended by the probation officer, as a condition of probation, to order the minor not to use or be under the influence of any controlled substance and to order the minor to submit to drug and substance abuse testing as directed by the probation officer. (Welf. & Inst. Code, § 729.9.)

Existing law provides that if a minor is found to be a ward of the juvenile court due to the commission of various acts of vandalism, the court as a condition of probation is required to order the minor to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both. (Welf. & Inst. Code, § 742.16.)

Existing law provides that when a ward is placed under the supervision of the probation officer or committed to the care, custody, and control of the officer, the juvenile court may make any and all reasonable orders for the conduct of the ward, and impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced. (Welf. & Inst. Code, § 730, subd (b), as repealed on July 1, 2021, & § 730, subd. (b), as operative on July 1, 2021.)

Existing law authorizes the court to order the ward go to work and earn money for the support of the ward's dependents or to effect reparation and in either case that the ward keep an account of the ward's earnings and report the same to the probation officer and apply these earnings as directed by the court. (Welf. & Inst. Code, § 730, subd. (b), as repealed on July 1, 2021, & § 730, subd. (b), as operative on July 1, 2021.)

Existing law authorizes, effective July 1, 2021, the court to order the ward to make restitution, pay a fine up to \$250 for deposit in the county treasury if the court finds the minor has the financial ability to pay, or to participate in an uncompensated work program. (Welf. & Inst. Code, § 730, subd. (a)(1)(A), as operative on July 1, 2021.)

Existing law requires the court, upon a minor being found a ward of the court, to order the minor to pay a restitution fine and restitution to the victim or victims, if any. (Welf. & Inst. Code, § 730.6, subd. (a)(2).)

Existing law authorizes the board of supervisors of any county to impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which are required to be deposited in the general fund of the county. (Welf. & Inst. Code, § 730.6, subd. (q).)

This bill prohibits a minor adjudged to be a ward of the court who is subject to an order of probation, with or without supervision of the probation officer, from remaining on probation for a period that exceeds six months, except as specified.

This bill provides that a court may extend the probation period for a period not to exceed six months after a noticed hearing and upon proof by a preponderance of the evidence that it is in the ward's best interest.

This bill requires the probation agency to submit a report to the court detailing the basis for any request to extend probation at the hearing.

This bill requires that the ward's attorney be given the opportunity to examine witnesses and present evidence at the probation review hearing.

This bill requires the court state the reasons for the findings orally on the record in cases in which the court finds by a preponderance of the evidence a basis for extending probation beyond the six-month period. Requires the court to set forth the reasons in an order entered upon the minutes if requested by either party or when the proceedings are not being recorded electronically or reported by a court reporter.

This bill requires, if the court extends probation, that the court schedule and hold a noticed hearing for the ward not less frequently than every six months for the remainder of the wardship period.

This bill requires the court, prior to terminating jurisdiction over a ward subject to an order for foster care placement, to comply with existing provisions of law related to terminating jurisdiction over those youth. Prohibits the requirement to comply with those provisions of law from being a basis for continuing an order of probation or the terms and conditions of such an order.

This bill provides that its provisions do not preclude termination of a ward's probation before the end of a six-month period.

This bill provides that it does not apply to any ward who is transferred from a secure youth treatment facility to a less restrictive program, as specified, and who is subject to any remaining baseline or modified baseline term until the ward is discharged pursuant to a probation discharge hearing, as described.

This bill requires that the conditions of probation ordered when a ward is placed on supervised or unsupervised probation meet all of the following requirements:

- The conditions are individually tailored, developmentally appropriate, and reasonable.
- The burden imposed by the conditions must be proportional to the legitimate interests served by the conditions.
- The conditions are determined by the court to be fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.

This bill amends existing law that authorizes the court to order the ward to make restitution, to pay a fine up to \$250 for deposit in the county treasury if the court finds that the minor has the

financial ability to pay the fine, or to participate in uncompensated work programs, and instead limits the court's authority to only order restitution.

This bill amends several provisions of law requiring the juvenile court to impose specific conditions of probation on a ward of the court and instead makes all of those conditions of probation discretionary.

This bill includes several legislative findings and declarations.

COMMENTS

1. Need for This Bill

According to the author:

The Legislature has neglected to issue comprehensive guidelines on non-custodial wardship probation. Excessive supervision limits the potential of young people and wastes resources that could otherwise be directed towards rehabilitative services and supports for youth.

According to county probation data, the average time a youth spends on non-custodial wardship probation in California is nearly 2 years (23.4 months). Research reveals that keeping a young person on supervision for longer than six months is not likely to result in public safety gains. Guided by this research, juvenile justice experts in the Pew Charitable Trusts' Public Safety Performance Project have recommended shorter periods of probation for youth in several states.

In addition to unreasonably long time periods of probation supervision, California juvenile court probation orders impose anywhere from five to fifty conditions that youth must abide by during their time on probation. ...

Lengthy periods of probation supervision and burdensome conditions increase the likelihood that youth will be charged with probation violations, sometimes resulting in incarceration, often for minor offenses. The conditions are often excessive and unrelated to the behavior that brought the youth before the court. Instead, evidence supports limiting probation conditions to ensure they are individually tailored so young people have clear and meaningful goals to work towards.

Analysis of county probation data also uncovered that the lack of statutory guidance is leading to an issue of justice by geography. A person in one county faces an average of 6 months on probation, while a person in another county average over 2.5 years (28.5 months) for similar cases.

Importantly, the data shows that youth of color are far more likely to be placed on probation, and for longer periods of time. ...

...

By establishing standards for the conditions and length of time for probation, we can ensure that young people are getting the support and programming they need for as long as they need it, without subjecting them to a long list of burdensome probation conditions for an indeterminate length of time.

2. Juvenile Probation

The juvenile court is authorized to place a minor declared to be a ward of the court on probation. Juvenile probation can theoretically continue as long as the juvenile court has jurisdiction over the ward. There is no statutorily required periodic review. (Welf. & Inst. Code, §§ 602, 607, 727, 730, subd. (b).)

Concerns about the use of juvenile probation were outlined in a recent report published by two of the bill's co-sponsors, the National Center for Youth Law and Haywood Burns Institute:

Probation is the most common court ordered outcome imposed on youth in juvenile court in California. Too often, youth are placed on probation for an unspecified amount of time, while under the microscope of overly burdensome and confusing probation conditions. Conditions are rarely individualized—or realistic—and are ultimately impediments to healthy youth development and rehabilitation. Furthermore, available data show that probation is more frequently imposed on youth of color, and for longer periods of time. Together, these practices trap many young people in the legal system for their entire adolescence, lead to further use of detention, and cause far more harm than good. (National Center for Youth Law and W. Haywood Burns Institute, *Ending Endless Probation* (Mar. 2021), p. 2, citing The Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting it Right* (2018).)

The California Department of Justice reported that in 2019, almost 20,000 youth in California were placed on wardship probation. (Office of the Attorney General, California Department of Justice, *Juvenile Justice in California* (2019), p. 40, available at <<https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Juvenile%20Justice%20In%20CA%202019.pdf>>.) The report included the percentage of each type of juvenile court disposition (e.g., wardship, informal probation, dismissed, etc.) within each racial or ethnic category, and indicated that 51.2% of White youths were placed on wardship probation, 63.4% Hispanic youths were placed on wardship probation, 63.4% Black youths were placed on wardship probation, and 48.6% of youth identified as “Other” were placed on wardship probation. (*Id.* at p. 41.)

This bill limits to six months the period of time in which a court may place a ward of the court on probation, except that a court may extend the probation in six-month increments if it finds by a preponderance of the evidence that it is in the best interest of the ward. Opponents of the bill argue that because the bill does not distinguish between more and less serious offenses, a court may be disinclined to grant probation in some instances, even with the ability to extend probation in six-month increments.

3. Probation Conditions

A juvenile court may impose on a minor on probation “any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and

rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) “A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile.” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5; *In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

In *People v. Lent* (1975) 15 Cal.3d 481, the California Supreme Court articulated the following test to determine whether a probation condition constitutes an abuse of discretion: “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.’” (*Id.* at p. 486.) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) “As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.” (*Id.* at pp. 379-380.) The *Lent* test applies to juvenile probation conditions. (*In re P.O.* (2016) 246 Cal.App.4th 288, 294; *In re D.G.* (2010) 187 Cal.App.4th 47, 52.) In *In re Ricardo P.* (2019) 7 Cal.5th 1113, the California Supreme Court noted that “*Lent*’s requirement that a probation condition must be ‘reasonably related to future criminality’ contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition.” (*Id.* at p. 1122.)

The proponents of this bill argue that youth are “burdened with excessive and arbitrary probation conditions which, research has shown, harms their development and prospects for rehabilitation.” (*Ending Endless Probation, supra*, at p. 5.) This bill requires conditions of probation for a ward to be individually tailored, developmentally appropriate, and reasonable. This bill additionally requires that the burden imposed by those conditions is proportional to the legitimate interests served by the conditions.

This bill also amends several provisions of existing law that require a court to impose certain conditions of probation and instead makes all of those conditions of probation discretionary.

4. Arguments in Support

According to one of the bill’s sponsors, the National Center for Youth Law:

Probation is the most common disposition imposed on youth in California juvenile courts. In 2019, over 19,000 young Californians were placed on wardship probation. While probation departments intend to provide rehabilitative services to young people, this function is undermined by its simultaneous focus on surveillance and compliance....

Importantly, youth of color are disparately impacted by legal system involvement and probation supervision—the vast majority (87%) of young people in California placed on probation in 2019 were youth of color. According to data from the California Department of Justice (DOJ), youth of color are significantly more likely to go through court proceedings and be placed on formal probation. In 2019, Black youth were more than eight times more likely than White youth to be placed on probation and Latinx youth were more than two times more likely.

In contrast to a growing number of states, California has no statutory limitation on the length of time young people spend under court ordered, non-custodial “wardship” probation supervision—something that was recently changed in the California adult courts with AB 1950 (2020). Analysis of County probation data reveal that young people are on wardship probation for an average of up to two years, with youth of color spending significantly longer periods of time on probation than White youth.

Long probation terms significantly increase the likelihood that youth will be charged with probation violations, sometimes resulting in incarceration, and often for minor noncriminal transgressions. This practice is in conflict with the principles of youth development and research demonstrating that keeping youth on supervision for longer than six months does not likely result in public safety gains....

Further, probation conditions all too often set youth up for failure. Research shows that youth often do not understand what is expected of them... The imposition of long lists of requirements, many of which bear little or no relationship to the behavior that brought the youth before the court, make it difficult for youth to succeed. Juvenile court probation orders in California can include anywhere from five to fifty conditions of probation. ... Evidence supports limiting probation terms and using the incentive of shortening probation terms as a reward for positive behavior showing that this can improve outcomes and reduce costs without compromising public safety.

...AB 503 will address the problems with California’s probation supervision of youth by:

- Creating a presumption that non-custodial wardship probation will be terminated at six months, with the ability to grant extensions to probation supervision if the court determines by a preponderance of the evidence that it is in the youth’s best interest to continue probation past the initial 6 month wardship probation period.
- Requiring probation conditions to be individually tailored, developmentally appropriate, and reasonable.
- Increasing judicial discretion by changing statutorily mandated probation conditions to permissive probation conditions, so that judges are able to make individualized determinations.

Commonweal writes:

This bill would impose reasonable time limits on orders of juvenile probation imposed by the court after adjudication for a delinquency or status offense. It would also limit orders of probation to conditions that are tailored to the needs and circumstances of each youth. Furthermore, the bill restores the discretion of the Juvenile Court to impose certain statutory sanctions on WIC 601 or 602 juvenile court wards.

...

AB 503 addresses the over-reach and obsolescence of the current statutory structure by:

- Setting a baseline limit of six months for probation supervision after adjudication for status offense or delinquency wardship under WIC Section 727 —subject to extension by the court based on evidence presented at a noticed hearing. This (in the form of a new WIC Sec. 602.05) establishes an essential safeguard against long probation terms that lack rehabilitative support while setting youth up for failure and deeper penetration into the juvenile and adult criminal justice systems.
- Limiting probation conditions imposed by the court to those that are “individually tailored, developmentally appropriate, and reasonable” without imposing an unreasonable burdens on the ward. This change restores rationality to the process of imposing juvenile probation conditions and will generate higher rates of successful completion of juvenile probation.

The bill also restores the discretion of the Juvenile Court to impose certain statutory sanctions and conditions on adjudicated youth. ...[M]any youth (and in some cases parents) are saddled with myriad requirements of restitution, property restoration, community service, counseling and other sanctions that are mandated by law even if they are inherently difficult perform or are simply irrelevant to the circumstances and conduct of the youth. The sponsors have already indicated how these blanket and mandatory conditions have a disproportionate impact on youth of color and on youth with economic, educational or other deficits. AB 503 restores the discretion of the court to impose these sanctions as necessary and appropriate in each individual case. That is how the juvenile justice system should work.

5. Arguments in Opposition

The California Judges Association writes:

We do support a bill that would place guardrails on juvenile probation commitments for youth... Endless probation grants are bad for youth development and as a rehabilitation strategy.

This bill expects misdemeanors and violent felonies to be treated the same. Judges must retain the flexibility to treat cases differently depending on the youth and the law violation.... The bill as written today continues to have too many possible unintended consequences, and it divests the court of its oversight duty of ensuring the rehabilitation of the youth and public safety pursuant to Welfare and Institutions Code section 202(d)...

...

It is our observation that law enforcement agencies, probation departments and other prosecutorial agencies are improving efforts to divert low to medium risk youth completely away from the juvenile justice system. Those now left to enter

the juvenile justice system often have higher criminogenic needs, have committed serious/violent felonies and/or present with significant substance abuse or trauma issues that may require intensive case management... Case planning, the delivery of services and effecting change for our higher need youth require time and effort by our probation departments and community providers. To accomplish the goal of rehabilitation for this population of youth within a 6-month time frame is not always realistic.

If the bill passes as is, some cases may now require that youth be in custody longer to make sure that they are fully rehabilitated on a timeline that would include the 6 months of probation in the community—rather than release them on supervised release to try services in the community prior to a custodial remedy. This would have the impact of moving backwards in the arena of detention reform. Another unintended consequence is that prosecutors will more than likely increase motions for transfer to adult court for violent felonies if they believe the formal probation grant once out of custody will only be 6 months long.

Wardship probation is for cases that are more serious than those eligible for court ordered informal supervision or deferred entry of judgment, but AB 503 as currently designed will make the consequences less serious for diversionary opportunities. Informal supervision pursuant to Section 654.2 could go on for as much as 12 months, and Deferred Entry of Judgment pursuant to Section 790 for a minimum of 12 months and a maximum of 36 months. A presumptive six-month period of wardship probation will discourage youth who are eligible for court ordered diversion from pursuing these available options and avoiding wardship.

According to the Chief Probation Officers of California:

Research supports developing individualized plans that address a youth's particular and specific circumstances is what helps youth best achieve success, rather than any singular prescribed timeline. Just as we know that case plans should be individualized to each youth, we also know that progress, timelines, and completion is also individual in nature.

Therefore, we should be looking at how to best balance the shared goal of moving youth quickly and successfully off wardship without impeding key treatment or programming they need as identified by the court. As recently amended, there are several concerns and implications to the 6 months that directly impact the treatment, programming, and sustainable rehabilitative goals of youth who are made wards of the court.

Importantly...there is a graduated continuum of juvenile responses and dispositions to reflect the needs of the youth and their safety as well as that of the community. These include, but are not limited to diversion, informal probation, deferred entry of judgement (DEJ), and non-wardship probation that can be used by the court. These are important alternatives to wardship that can be used in cases where deemed suitable.

Youth who have been made wards have been determined by the court to need focused services, programming, and treatment that may extend beyond 6 months in order to simultaneously achieve improved well-being for the youth and safety for the community. For example, important programs for some sex offense related needs would not be able to be completed with the timelines specified by this bill. Additionally, this bill proposes a timeline for wardship probation that is shorter in duration than other graduated dispositions such as DEJ which has a minimum of one year....

Wardship probation is reserved for circumstances involving more serious offenses and when deemed necessary and appropriate for the safety of the youth and the community. We are concerned that by setting a definitive timeline of 6 months, even with the potential to extend, that 6 months wardship will not be deemed suitable for some cases or will not accommodate the length of certain treatment or programs, therefore more stringent alternative dispositions may be considered to potentially include adult court or a secure setting.

...

Again, the goal of setting up processes and mechanisms to move youth successfully off wardship probation upon progress of their case plan is one we share. It is important for youth to have a clear understanding of what is expected of them in order to successfully complete their term of probation. As noted above, we believe building a system with parameters and incentives should be established to move youth successfully through their programs and off probation. This should be done in combination with the ability for judges to look at the individual needs of the youth, progress toward their case plan, and completion of programs rather than a presumption for discharge at six months.

-- END --